

CIVIL CASE NO. 1:11cv297

Defendants.

ORDER

This action was initiated on November 7, 2011. [Doc. 1]. On January 6, 2012, the Clerk of Court entered default based on the representation of Plaintiff's counsel that neither Conair Jet Sales, Inc. (Conair) nor Edd Conn (Conn) had appeared in the action. [Doc. 16]. A First Amended Complaint was filed on February 2, 2012. [Doc. 22]. On February 7, 2012, the Court struck the Clerk's Entry of Default because the Motion for Entry of Default inaccurately reflected that Conn had not appeared in the action. [Doc. 23].

The Court also noted that five of the named Defendants had not been served with either the original or amended complaint. [Id.].

On March 13, 2012, Conn filed a document which he titled an Answer to Complaint. [Doc. 33]. In that pleading, Conn stated that he was representing both himself and Conair, a corporation. [Id.].

On May 8, 2012, the Plaintiff filed a Second Amended Complaint. [Doc. 53]. Answers to that complaint were filed by Defendants Dove Air, Inc., Joseph Duncan, Alyssa Duncan, Bonnie Duncan and Robert Hettinger. [Doc. 64, Doc. 75, Doc. 76; Doc. 77]. Although the Plaintiff attached a Certificate of Service to the Second Amended Complaint, no affidavit of service has been filed showing service of this pleading on the remaining Defendants Conair, Conn, Johnson, and John and Jane Doe. Defendant Conn, who appeared in connection with the first two complaints, has failed respond to the Second Amended Complaint. Conair has never appeared. Moreover, the Plaintiff has failed to file proof of service of the original Complaint or any other pleading as to Defendants Johnson, John Doe and Jane Doe.

Federal Rule of Civil Procedure 4 provides:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed.R.Civ.P. 4(m).

The Plaintiff is hereby placed on notice that unless good cause is shown for the failure to effect service of the original summons and complaint on Defendants Johnson, John Doe and Jane Doe, this action shall be dismissed without prejudice as to those Defendants.

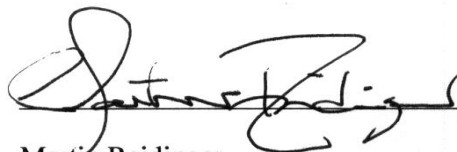
As to Defendants Conair and Conn, the Court will require the Plaintiff to file proof of service of the Second Amended Complaint on these two defendants. Concerning Conn's prior attempt to represent Conair, he is hereby placed on notice that "[i]t has been the law for the better part of two centuries ... that a corporation may appear in federal courts only through licensed counsel." Rowland v. California Men's Colony, 506 U.S. 194, 202, 113 S.Ct. 716, 121 L.Ed.2d 656 (1993). The Court therefore instructs Conair that it must appear only through counsel in this Court. Failure to do so will result in entry of default against the corporation. United States v. Carlson, 2012 WL 4340628 (W.D.N.C. 2012); Inspirational Network, Inc. v. TMH Telemedia Servs. Ltd., 2011 WL 765674 (W.D.N.C. 2011).

IT IS, THEREFORE, ORDERED that on or before fifteen (15) days from entry of this Order, the Plaintiff must show good cause for the failure to effect service of the original summons and complaint on Defendants Johnson, John Doe and Jane Doe or, in the alternative, shall file a Notice of Dismissal pursuant to Federal Rule of Civil Procedure 41 as to these Defendants.

IT IS FURTHER ORDERED that on or before fifteen (15) days from entry of this Order, the Plaintiff must file proof of service on Defendants Conair and Conn of the Second Amended Complaint.

The Clerk of Court is instructed to mail a copy of this Order to Conair Jet Sales, Inc. and Edd Conn by certified mail, return receipt requested at 614 SE 12 Avenue, Deerfield Beach, Florida 33441.

Signed: February 4, 2013


Martin Reidinger
United States District Judge

